

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EUGENE THEER, JEANETTE THEER,
AND JASON THEER,

Plaintiffs,

vs.

BNSF RAILWAY COMPANY, a Foreign
Corporation;

Defendant.

4:15CV3148

ORDER

After conferring with counsel, for the reasons stated on the record, (Filing No. 65),

IT IS ORDERED:

1) Defendant's motion for protective order, (Filing No. 50), is granted, and Plaintiff's motion, (Filing No. 43), is granted in part and denied in part as follows:

- a. Plaintiff's motion to strike Defendant's expert witnesses for failing to comply with Fed. R. Civ. P. 26(a)(2)(B)(ii), is denied.
- b. Plaintiff's alternative request for an order compelling production of topographic survey data is granted in part. If Defendant's expert created reports or records from the raw survey data (which has now been provided to Plaintiff's counsel) that were not produced with the defense expert report, those reports or records—whether relied upon or not—shall be disclosed to Plaintiff's counsel by January 23, 2017.
- c. As to rainfall and stream flow data, Defendant's motion for protective order, (Filing No. 50), is granted and Plaintiff's motion, (Filing No. 43) is denied. Defendant need not produce the rainfall and stream flow data reviewed by its expert, such records being identified in the report, publicly available, and initially supplied to Defendant by Plaintiff.
- d. Any supplemental report by Plaintiff's expert shall be disclosed on or before February 1, 2017.

- e. Defendant's position on what must be disclosed with an expert report was substantially justified, and upon review of Plaintiff's preliminary expert report and with the expert disclosure continuance (see paragraph "d" above) and amendments to the progression order set forth herein, its failure to disclose any additional topographical information (if any) earlier is harmless. Plaintiff's request for sanctions is denied.
- 2) Defendant's motion to quash, (Filing No. 46), is granted in part and denied in part as stated on the record.
- 3) The case progression order is amended as follows:
- a. The jury trial of this case is set to commence before Richard G. Kopf, Senior United States District Judge, in Courtroom 1, United States Courthouse, Lincoln, Nebraska, at 9:00 a.m. on August 28, 2017, or as soon thereafter as the case may be called, for a duration of four (4) trial days. This case is subject to the prior trial of criminal cases and such other civil cases as may be scheduled for trial before this one. Jury selection will be held at the commencement of trial.
 - b. The Pretrial Conference is scheduled to be held before the undersigned magistrate judge on August 8, 2017 at 1:00 p.m., and will be conducted by internet/telephonic conferencing. Counsel shall use the conferencing instructions assigned to this case (Filing No. 10) to participate in the conference. The parties' proposed Pretrial Conference Order and Exhibit List(s) must be emailed to zwart@ned.uscourts.gov, in either Word Perfect or Word format, by 5:00 p.m. on August 7, 2017.
 - c. The deposition deadline is March 31, 2017.
 - d. The deadline for filing motions to dismiss and motions for summary judgment is April 28, 2017.¹

¹ To facilitate the court's review, the parties are strongly encouraged to include hyperlinks to the evidence, CM/ECF record, and all legal authorities cited within their briefs filed in support of, or in opposition to, any motions filed. See NECivR [7.1](#). For instructions, see "Hyperlinking Information" at <http://www.ned.uscourts.gov/attorney/electronic-case-filing>.

- e. The deadline for filing motions to exclude testimony on *Daubert* and related grounds is April 28, 2017.

January 18, 2017.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge